



September 23, 2009

**VIA ELECTRONIC COMMENT FILING SYSTEM (ECFS)**

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

**Re: Ex Parte Communication, 47 C.F.R. § 1.1206**

***Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165***

Dear Ms. Dortch:

On September 23, 2009, Ken Fellman, incoming president of the National Association of Telecommunications Officers and Advisors (NATOA), Joanne Hovis, incoming president-elect of NATOA, Gerry Lederer of Miller & Van Eaton, P.L.L.C. and I, on behalf of NATOA, met with Wireless Telecommunications Bureau Chief Ruth Milkman, Associate Bureau Chief Jane Jackson and Deputy Chief for Spectrum and Competition Jeffrey Steinberg. The purpose of the meeting was to discuss local government's perspective on zoning of wireless facilities. We spoke from the attached documents.

Pursuant to Commission rules, please include a copy of this notice in the record for the proceeding noted above.

Sincerely,  
/s/ Matthew R. Johnson  
Matthew R. Johnson  
Legal Fellow  
NATOA

cc: Ruth Milkman  
Jeffrey Steinberg  
Jane Jackson



## LOCAL GOVERNMENT PERSPECTIVE ON ZONING OF WIRELESS FACILITIES

- **Congress has spoken clearly on this issue and retained local zoning.**

The language of § 332(c)(7) is clear as to Congress' intent to keep local and State zoning of wireless facility siting applications intact. Even more to the point, the legislative history says that § 332(c)(7) "prevents Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances set forth." The limitations referred to require that wireless siting applications must be addressed "within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request," and that zoning regulations "shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

- **Congress left disputes arising under § 332(c)(7) to the courts.**

Congress was clear in the legislative history that "[i]t is the intent of the conferees that other than under section 332(c)(7)(B)(iv) [radio emissions] of the Communications Act of 1934...the courts shall have exclusive jurisdiction over all other disputes arising under this section."

- **The wireless industry has presented scant and specious claims to support its petition.**

The claims used to support the petition are few and faulty. The wireless industry has presented supposed "horror stories," telling only one side of the story and in some cases giving vague or anonymous tales to support their claims. At the same time, the wireless industry repeatedly says most local zoning authorities are able to complete applications within the deadlines they propose. In essence, they claim no problem exists except in extreme cases – the precise reason Congress left flexibility in the process by retaining local zoning control and providing for a judicial forum to handle disputes or delays that may arise during wireless siting applications. The last time the wireless industry made claims like those in the petition, the FCC and local governments worked with industry to find a solution – recent history the industry now chooses to forget.

- **Granting the industry's petition would undermine due process and democratic values.**

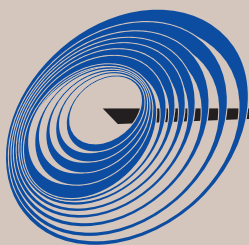
Many local zoning authorities are required to provide local residents with notice of a proposed siting, as well as an opportunity to comment and voice concerns with a proposal. This process – designed to further protect property values, safety, and aesthetic qualities of an area – would be eviscerated under the petition. Further, for local zoning authorities to process applications in line with the proposed deadlines, they would be forced to give preference to wireless siting applications, something Congress specifically rejected in the legislative history: "It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision."

NATOA filed comments in response to CTIA's Petition with the FCC on behalf of itself, the National League of Cities, National Association of Counties, and the United States Conference of Mayors. Additional information can be found at [www.natoa.org](http://www.natoa.org).

Presented 10/24/08 US House of Representatives Energy & Commerce Staff

National Association of Telecommunications Officers and Advisors

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# Being Heard - Not Seen: A Case Study On Locating Cellular Antennas on Public Property

By Margaret Somereve

“**C**an you hear me now?” The slogan of a new mobile unplugged generation. With over 200 million subscribers of wireless services in the U.S., the need for locating more cell sites is growing as well. The CTIA, the international association for the wireless telecommunication industry, cites there were over 197,000 cell sites across the country as of December 2006. As towers become overloaded with calls or underserved areas need to be served, cellular companies are looking for new locations to site their antennas.

What should a local government do if a cell company comes calling and wants on city-owned property? Put out the welcome mat. If you haven't been approached by a company and are hesitant that the company's installation will interfere with city operations, you have the ability to protect your city property. You also can protect your operations, receive monthly rent payments and minimize the number of monopolies that might locate in your city.

In Farmers Branch, Texas' aesthetics are very important to the City Council. The Council takes pride in being a Tree City USA and in its beautifully landscaped medians, rights of way and parks. When the City of Farmers Branch was first approached with the idea of putting cellular antennas on a water tower back in 1996, it was with mixed feelings. The City Manager liked the idea of monthly rentals, however, the Public Works department believed that the purpose



of a water tower is for water storage and not for attaching superfluous items to it. The City Manager's office, along with the Public Works department, reviewed the site and determined what would be needed. It was determined that criteria should be developed for not only the tower that was being considered, but for all of the water towers in the city since each tower and site were very different. One of the important requirements was to make the antennas "disappear."

General criteria for any placement of cellular antennas on city property include:

- The equipment facility shall be of the same material, color, and character of other city owned structures on site.
- The equipment facility shall meet all building requirements.
- All zoning regulations must be followed.
- A structural engineering analysis must be performed and sealed by a professional engineer. Site plans and construction plans shall be approved before any permits or leases are issued.
- All wires, cables, etc. must be underground from the equipment facility to the storage tank. On the tank

they must be attached to the interior. No antenna system shall be placed on the bowl of the storage tank.

- If operation of the antenna system interferes with city operations including the transmission of public safety, the lessee will cease transmitting immediately and not resume until the interference is remedied.
- The appearance and/or design of the antenna or equipment facility shall not harm city facilities or aesthetics.
- All antennas are flush-mounted and painted to match.

Also, specific criteria were developed for each water tower to fit each one's characteristics. One of our water towers has multiple legs, one has a metal cylinder base and two have a concrete base. When the city was approached to place antennas on the multi-legged tower, the company submitted plans that would have had an array of three antennas panels on each of three legs. We were concerned that the configuration would be very noticeable to the surrounding businesses, and apartment and single family residents in the area. The city requested that each individual antenna panel be flush-mounted on its respective leg. The company's first response was "We

can't do that." The city asked the company to go back and talk to their engineers to see if it would be possible to flush mount the antenna panels. The company came back and flush-mounted each antenna panel on individual legs. The result has been a very minimal visual impact.

Antennas are easy to hide when they are flush-mounted, painted to match and one hundred feet in the air. However, the two hundred square foot associated equipment building becomes harder to hide. At the city's justice center, which has a wrap-around limestone wall, the wall and water tower itself were used to hide the three equipment buildings associated with the three different antenna installations. Not only did we use the tower and the wall to block the buildings from the traveling public, we required that the buildings look similar to the limestone wall. However, when company number four asked to be on this tower, the site had no more suitable ground space behind the tower to locate the equipment building. The company was asked to install landscaping on the site to help soften the appearance of their building that was proposed to be located south of the tower. The landscaping was designed to be added to the site in a way that would look natural, blend in with other features on the sites, and not just be added immediately surrounding the equipment building.

A recently approved installation of a fifth company will be located to the north of the tower. This equipment building will be constructed to match the adjacent Justice Center instead of the site's decorative limestone wall. It was determined that since the Justice Center itself was the backdrop for this equipment building, that painting it the Justice Center's color could minimize its appearance by blending into the Justice Center exterior located behind the equipment building on its horizon.



The three different types of water towers in Farmers Branch.

<sup>1</sup> Farmers Branch, Texas is a northern suburb of Dallas with a residential population of 27,000 and a daytime population of 75,000.

Water towers are just one option for siting antennas inconspicuously, especially in residential areas where it's hard to locate monopoles. Light standards on ball fields are another option.



**Justice Center with water tower**



**Monopole on the right, new installed tree to the left**

Water towers are just one option for siting antennas inconspicuously, especially in residential areas where it's hard to locate monopoles. Light standards on ball fields are another option. By the time the city was approached about putting antennas in a park, we were very comfortable about installations on water towers. In a city that touts itself as the "City in the Park" with 28 neighborhood parks covering over 180 acres in a city with only 12 square miles, parks are very important and monopole antennas didn't lend themselves to the park landscape.

However, the city agreed to listen to the company's design for the site. A new taller light pole would be installed with the antenna array above the ball field lights. The park in question was used for fields and a walking track. The park is situated with residential homes to the south and commercial strip centers to the north. Due to the nature of this park and the commercial strip center immediately behind the cellular location, the city opted to allow a monopole on a piece of the park that was only used for storage of

soccer goals. It was located in the back of the park, blending in with the horizon. What was required of the company was to install 25 trees along the front of the park that faces the residential neighborhood to help conceal the visual clutter. With this monopole, the city required that the panels be flush-mounted to the pole to also reduce the visual clutter.

Not only is it important that a city keep the lines of communication open when the cellular company comes knocking, but the city can take proactive steps as well. The city recently built a fourth water tower. When designing this tower, the city knew that companies would be interested in locating here due to the location of the tower near two major highways. The idea of drilling through the concrete column made the Public Works Department nervous. The city engineered the tower for a "drop in" design for antennas. Two rings were attached at the 100 foot height with portals located at the common azimuths to allow the cables to be pulled through and attached on the

rings with no drilling. Panels were installed inside to allow for the cables to be attached and there are portals at the bottom of the tower to allow the cables to be pulled through the tower. There is no need to drill or bore holes in the tower. The additional design work and construction was a minimal cost in the overall project. The company that is located there currently said it was the easiest, fastest installation they had ever done on a water tower.

Hiding antennas in equipment buildings shouldn't be the only concern the city has when leasing out its property. Security of water systems has always been important, but even more so since 2001. The security measures that were implemented in Farmers Branch have worked and were accepted with no questions by every cell company that located on city property. At any time a company needs to be inside a tower or on a secured gated site, the company is responsible for paying a City of Farmers Branch off-duty police officer to be onsite. The city requires names of all



**New tower designed with antennas in mind.**

persons working onsite in advance and company issued photo ids must be present. Finally, keeping all antenna installations below the water tower's bowl keeps the companies equipment and workers away from the water source.

The city learned very quickly through this process that it can be done if you ask. This is the city's property and the city has a responsibility to the residents to keep its property in good condition, both physically and

visually. Don't be afraid to ask a company to rework the design or add additional landscaping. The companies would rather be on water towers or light standards in parks than to construct a new monopole. However, a good working relationship between you and a company will benefit both parties. It does no one any good if you hold your water towers hostage for excessive rents or landscaping requirements.

At the City Council meeting when the second installation was being considered for the Justice Center water tower, a resident got up to protest the placement of antennas on the water tower. Her backyard looks out and she can see the tower and didn't want to look out to see the "ugly" antennas. The Mayor listened as she explained her concerns. When she was done, the Mayor asked her what she thought of the antennas that were already on the tower. She replied that she didn't realize that there were antennas on the tower. The Mayor replied that the new antennas will look just like the existing ones.

It's only through open dialogue that a plan can be reached that is both beneficial to a city, protects the city's assets and allows antennas to be located in the city in a non-obtrusive way so that residents can be heard but the antennas aren't seen.

A copy of the City of Farmers Branch standard water tower lease agreement can be found at [www.tatoa.org](http://www.tatoa.org). ■

*Margaret Somereve has been the Assistant to the Director of Public Works for the City of Farmers Branch since February 2005. Prior to her current position, she was the Assistant to the City Manager for Farmers Branch for 9 years. Margaret is responsible for cable, telephone, gas and electric regulations, franchises and legislative issues. She is also responsible for negotiating contracts with cellular companies for locations on city facilities. Margaret has been a member of NATOA and TATOA for the past 10 years and is currently serving as President of TATOA.*